

SITE DEVELOPMENT PERMIT AMENDMENT

FILE NO. HA13-041-03

LOCATION OF PROPERTY South side of West St James Street, between Terraine and North San Pedro Streets

ZONING DISTRICT DC Downtown Primary Commercial

GENERAL PLAN DESIGNATION Downtown

PROPOSED USE Site Development Permit Amendment to allow for Saturday construction hours between 8:00 a.m. and 5:00 p.m. for a previously approved 20-story and 22-story mixed-used development.

ENVIRONMENTAL STATUS A Determination of Consistency to the Envision San Jose General Plan Final Program EIR (SCH No. 2009072096, Downtown Strategy 2000 Final Program EIR (SCH No. 2003042127), St. James Towers Residential Project Supplemental EIR (SCH No. 2013112021), and the Supplemental Environmental Impact Report-Greenhouse Gas Emission Analysis (Resolution No. 77617).

APPLICANT/ADDRESS KT Urban
21710 Stevens Creek Boulevard #200
Cupertino, CA 95014

OWNER/ADDRESS Full Power Properties, LLC
1426 Fillmore Street, Suite 213
San Francisco, CA 94115

FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. **Project Description.** This is a Site Development Permit Amendment to allow for Saturday construction hours between 8:00 a.m. and 5:00 p.m. for a previously approved 20-story and 22-story mixed-use development.
2. **Project Site.** The site is a 1.8-acre site, located on the south side of West St. James Street, between Terraine and North San Pedro Streets. Currently, the site is undergoing construction.
3. **Surrounding area.** Development in the surrounding project area is a mix of retail/commercial, office, and residential uses.

4. **General Plan.** This site has a designation of Downtown on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram. This designation includes office, retail, service, residential, and entertainment uses. The project conforms to the General Plan in that the project incorporates both residential units and ground floor commercial space
5. **Zoning District.** The site is located in the DC Downtown Primary Commercial Zoning District and the project and amendment meets the zoning requirements in regards to setbacks, use, and parking.
6. **Noise.** The noise level from the Saturday construction hours will not have an adverse impact as identified in the St. James Towers Residential Project Supplemental Environmental Impact Report.
7. **CEQA.** A Determination of Consistency to the Envision San Jose 2040 General Plan Final Program EIR (SCH No. 2009072096), Downtown Strategy 2000 Final Program EIR (SCH No. 2003042127), St. James Towers Residential Project Supplemental EIR (SCH No. 2013112021), the Supplemental Environmental Impact Report-Greenhouse Gas Emission Analysis (Resolution No. 77617), and addendum thereto was adopted for this project under the provisions of the environmental review requirements of Title 21 of the San Jose Municipal Code implementing the California Environmental Quality Act of 1970, as amended, and pursuant to Section 15164 of the CEQA Guidelines. The proposed project is within the scope of the certified EIRs and related addendum pursuant to CEQA and CEQA Guidelines Section 15168 (c)(2). The project will not result in significant environmental effects that have not already been identified in the previous certified EIRs and related addendum thereto.

FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts, with respect to the Site Development Permit Amendment findings (Section 20.100.640), that in addition to the Site Development Permit findings (Section 20.100.630), the Amendment does not negate any findings required by the Site Development permit. The proposed project is consistent with the findings in Section 20.10.630 in that:

1. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are not changing, and are still compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood, in that the buildings, structures, and site have not been changed from the original approval.
2. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties in that the Addendum to the Supplemental Environmental Impact Report concluded that the additional retail will not create any environmental impacts beyond those already studied in the EIR. The project will still be required to adhere to the Mitigation Monitoring and Reporting Program to address adverse effects to air quality, biological resources, cultural resources, and noise previously identified.
3. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that they have not been changed from the original approval.

4. Traffic access, pedestrian access and parking are adequate, in that it has not changed from the previous approval, and the project is still in conformance with the City of San José Transportation Level of Service Policy (Council Policy 5-3).
5. The project is still consistent with site's Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Downtown in that:
 - a. Consistent with General Plan Land Use Policy 2.2, the project contributes to housing growth capacity in the downtown area to support key infrastructure investments, including the planned Bay Area Rapid Transit (BART) system.
 - b. Consistent with General Plan Land Use Policy 3.1, the project proposes residential development in compact, intensive form to maximize social interaction other downtown activities, including employment, entertainment, and cultural uses.
 - c. Consistent with General Plan Land Use Policy 3.4, the project's ground-floor commercial space further facilitates the development of retail and service establishments downtown.
6. The Amendment does not negate any of the findings that the interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious, in that the orientation, location and elevations of the proposed buildings, structures, and other uses on-site have not been changed from the original approval.
7. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, which even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. The noise level from the Saturday construction hours will not have an unacceptable negative impact on the surrounding community as identified in the St. James Towers Residential Project Supplemental Environmental Impact Report.

In accordance with the findings set forth above, a Site Development Permit Amendment for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required or by the applicant pursuant to all of the terms, provisions, and conditions of this permit of other approval and the provisions of Title 20 applicable to such Permit.

2. **Permit Expiration.** This Site Development Permit Amendment shall automatically expire two years from and after the date of issuance hereof by said Director, if within such two year period, the proposed construction of building has not commenced, pursuant to and in accordance with the provisions of this Site Development Permit Amendment. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Site Development Permit Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code.
3. **Lighting.** All lighting required to facilitate the nighttime construction shall be shielded in such a manner to minimize glare and light spill-over off the subject property.
4. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San Jose Municipal Code. The Permit Amendment shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
5. **Conformance to Other Permits.** Unless specifically modified with this permit, this project shall conform to all of the requirements of previous permit(s) including: H13-041, HA13-041-01, and HA13-041-02.
6. **Expiration of Previous Permit Amendment.** This Amendment shall automatically expire upon the expiration of the previously approved Site Development Permit, File No. H13-041.
7. **Extended Construction Hours.** Saturday construction hours shall be limited to 8:00 a.m. to 5:00 p.m.
8. **Neighborhood Notification.** Residential neighborhoods proximately located to the project site shall be notified in writing by the developer of the construction schedule at least seven days prior to the construction activity. The dates and hours for Saturday construction activity will be posted at the job site, visible to pedestrians, at least seven days prior to the construction activity. The dates and hours will also be posted in residential lobbies of the City Heights and Centerra buildings.
9. **Staging Areas.** The staging areas and construction material areas shall be located as far away as possible from acoustically sensitive adjacent land uses (i.e., residences). The staging areas will be located along Terraine Street and North San Pedro Street.
10. **Noise Control.** All internal combustion engines for construction equipment used on the site shall be properly muffled and maintained. All unnecessary idling of internal combustion engines is prohibited. A temporary noise control blanker barrier would be erected, if necessary, along building facades facing the construction site at the discretion of the Director of Planning, Building, and Code Enforcement. All stationary, noise-generating construction equipment, such as air compressors and portable power generators, shall be located as far as practical from existing residences and businesses.
11. **Disturbance Coordinator.** The construction team will include a noise disturbance coordinator who will track and respond to any complaints that arise from this construction activity. The disturbance coordinator will determine the cause of the complaint and implement reasonable measures to correct the problem as feasible. A telephone number for the disturbance coordinator will be posted at the site, and in the residential lobbies of the City Heights and Centerra buildings, and will be included in any construction notices sent to adjacent neighbors.

12. **Nuisance.** The uses of this site shall be operated in a manner that does not create a public or private nuisance. Nor shall the uses adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance must be abated immediately upon notice by the City.
13. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - The use as presently conducted creates a nuisance.

APPROVED and issued on this 24th day of August, 2016.

Harry Freitas, Director
Planning, Building, and Code Enforcement

Deputy